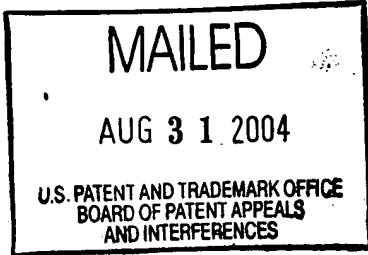


Hairston

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE



BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RICHARD J. TETT

Appeal No. 2003-1466
Application No. 09/136,839

ON BRIEF

Before HAIRSTON, DIXON, and LEVY, Administrative Patent Judges.
HAIRSTON, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 21.

The disclosed invention relates to a wireless messaging system and method for storing wireless messages sent to a subscriber, and for storing messages that were previously delivered to the subscriber. The wireless messaging system and method also

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transfers to the subscriber selected review information relating to stored wireless messages.

Claim 1 is illustrative of the claimed invention, and it reads as follows:

1. For use in a wireless messaging system, a message distribution system capable of allowing a subscriber of said wireless messaging system to review stored wireless messages sent to said subscriber comprising:

a first I/O interface capable of receiving, from said subscriber, a message retrieval request for messages directed to said subscriber;

a message retrieval controller coupled to said first I/O interface capable of determining an identity of said subscriber from identification data contained in said message retrieval request,

accessing a data record associated with said subscriber, said data record containing one or more of said stored wireless messages directed to said subscriber including at least one stored message which was previously delivered to said subscriber, and

transferring to said subscriber selected review information from said data record related to a group of one or more of said stored wireless messages including said at least one stored message which was previously delivered to said subscriber.

The references relied on by the examiner are:

Davis	5,392,452	Feb. 21, 1995
Pepe et al. (Pepe)	5,742,905	Apr. 21, 1998
Octel User Reference Manual, Octel Communications Corp., 1994, pages iii through 6.		

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Claims 1 through 5, 7 through 13 and 15 through 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis in view of the Octel manual.

Claims 6 and 14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Davis in view of the Octel manual and Pepe.

Reference is made to the briefs (paper numbers 19 and 21) and the answer (paper number 20) for the respective positions of the appellant and the examiner.

OPINION

We have carefully considered the entire record before us, and we will reverse the obviousness rejections of claims 1 through 21.

All of the claims on appeal require a stored data record that includes at least one stored wireless message that was previously delivered to a subscriber. The claims on appeal additionally require the transfer of selected review information related to at least one stored wireless message from the stored data record to the subscriber.

Davis discloses a cooperative paging system 10 and a cordless telephone system 15 that selectively route pages entered at page entry device 25 to pager/cordless telephone 40. If the page from the page entry device 25 is a short page, then the paging system 10 is used to deliver the page to the pager/cordless telephone 40

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(Abstract; column 7, lines 1 through 6). On the other hand, large data messages from the page entry device 25 are routed by the paging terminal 32 through the telephone network interface 30, the public switched telephone network (PSTN) 20 and the cordless telephone system 15 to the pager/cordless telephone 40 (Abstract; column 3, lines 22 through 43; column 7, lines 1 through 6). Davis uses a paging system queue 36 to queue the short pages, and a temporary message memory 42 for the large data messages (column 3, lines 3 through 26; column 4, lines 54 through 59). Davis is silent as to storage of messages previously delivered to the pager/cordless telephone 40 in queue 36, and he expressly states that the temporary memory 42 is erased after the message is received error free by the pager/cordless telephone 40 (column 4, lines 49 through 59).

Notwithstanding the silence of Davis concerning the queue 36 and the deliberate erasure of the temporary memory 42, the examiner is of the opinion (answer, page 5) that the skilled artisan would have modified the teachings of Davis with the message archival teachings of the Octel manual "to assure the successful transfer of any message." We disagree. Davis uses the paging terminal 32 in the paging system 10 to make certain that a page/message has been received by the pager 40. Once Davis is assured

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that a large data message has reached the pager/cordless telephone 40, he erases the temporary message memory 42. In the absence of a teaching to the contrary, we will not assume that the short pages are maintained in the queue 36 after they are transmitted to the pager/cordless telephone 40. Stated differently, Davis does not have a need to archive pages and messages, and the proposed modification of the teachings of Davis with those of the Octel manual is clearly erroneous because Davis teaches away from the archival teachings found in the Octel manual. As stated in W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 1550, 220 USPQ 303, 311 (Fed. Cir. 1983), a proper rejection of the claims can not be made by "disregarding disclosures in the references that diverge from and teach away from the invention at hand."

With respect to the claimed selected review information, we can not locate such information in the teachings of Davis and the Octel manual.

Based upon the foregoing, the obviousness rejection of claims 1 through 5, 7 through 13 and 15 through 21 is reversed.

The obviousness rejection of claims 6 and 14 is reversed because the teachings of Pepe do not cure the noted shortcomings in the teachings of Davis and the Octel manual.

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DECISION

The decision of the examiner rejecting claims 1 through 21
under 35 U.S.C. § 103(a) is reversed.

REVERSED


KENNETH W. HAIRSTON
Administrative Patent Judge


JOSEPH L. DIXON
Administrative Patent Judge


STUART S. LEVY
Administrative Patent Judge

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